IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13508 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARMENDRABA D JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13508 of 2004

MR NIRAV C THAKKAR for Petitioner No. 1

MS MANISHA SHAH A.G.P. for Respondent No. 1

MR MEHTA for MR PV HATHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/12/2004

ORAL JUDGEMENT

1. RULE. Ms. Shah learned A.G.P. waives service of rule on behalf of respondent no. 1 and Mr. Mehta

waives service of rule on behalf of respondent no. 2

2. The petitioner has by way of this petition challenged the impugned order dated 14th September, 2004 passed by respondent no. 1 whereby, respondent no. 1 has not continued the status quo granted vide order dated 31st August, 2004.

3. The short facts of the case are that the petitioner was elected as Sarpanch of Kharedi Gram Panchayat. It is the case of the petitioner that various applications were made by the members of the panchayat against the petitioner in order to see that she does not fully function as Sarpanch and she be removed. It is further the case of the petitioner that on one such application it was alleged that she had illegally given away the Bamboos and covers belonging to the State Government to the labourers working as "Shramiks" under the scheme of the State Government providing employment during the scarcity. In view of that, respondent no. 2 was directed to inquire into the matter and submit the report.

3.1. Thereafter respondent no. 2 inquired into the matter and submitted his report dated 19th March, 2002, whereby it was stated that the application against the petitioner was made only with vengeance and the said allegations are not correct. However, since the object was to remove the petitioner from the post of Sarpanch, respondent no. 2 issued notice dated 24th July, 2003 under the provisions of Section 57 (1) of the Act to showcause as to why, he should not be removed from the post of Sarpanch and why the order of recovering an amount of Rs.25,000=00 loss caused to the State Government should not be ordered to be recovered.

3.2. Thereafter, respondent no. 2 vide order dated 19th February, 2004 without considering the submissions and without properly appreciating the report of respondent no.2, ordered removal of the petitioner as Sarpanch and further to recover the loss caused to the State Government. Being aggrieved by order dated 19th February, 2004, the petitioner preferred an appeal before respondent no. 1. Respondent no. 1 vide order dated 23rd February, 2004 admitted the appeal and ordered maintenance of status-quo. The petitioner further submitted that after finally hearing the appeal, respondent no. 1 vide order dated 10th May, 2004 allowed the appeal on the ground that various important factors were not examined or considered by respondent no. 2 and, therefore, while quashing order dated 19th February,

2004, remanded the matter to respondent no. 2 for fresh hearing, with a direction to consider whether merely a technical error is made by the petitioner.

3.3. In view of said direction, respondent no. 2 issued notice dated 2nd June, 2004 for fresh hearing of the earlier show cause notice. The petitioner submitted that respondent no.2 again without considering the directions given by respondent no. 1 and without considering various important factors vide order dated 23rd August, 2004, directed removal of the petitioner as Sarpanch and recovery of loss caused to the State Government.

3.4. Being aggrieved by the said order, the petitioner preferred an Appeal before respondent no.1 on 31st August, 2004. However, on the same day itself, the Appeal of the petitioner was admitted and by way of ad-interim order, granted status-quo. The petitioner further submitted that vide order dated 14th September, 2004, respondent no. 1 vacated the earlier ad-interim relief granted vide order 31st August, 2004. Hence, this petition.

4. I have heard the learned advocates for the respective parties and have perused the relevant record. It appears that this Court vide order dated 15th October, 2004 had granted status-quo, qua the post of Sarpanch. However, by subsequent Notification dated 18th October, 2004, the Sarpanch is superseded. Thus, in view of the subsequent notification, the grievance of the petitioner does not survive.

4.1. In that view of the matter, the petitioner shall now not be continued in the office of the Sarpanch. Further the original order of removal passed by respondent no. 2, shall not be implemented till the Appeal is heard.

4.2. However, it is made clear that the petitioner shall not enjoy any right of the Sarpanch in view of the fact that the Panchayat is already superseded. Moreover, this order is passed only with a view to see that the order of removal is considered on merits by respondent no. 1.

5. The petition is disposed of accordingly. Subject to the above directions, rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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